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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42113

ARIZONA ELECTRIC POWER COOPERATIVE, INC.
v.
BNSF RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

Digest:[1] The Board reinstitutes the rate prescription in this proceeding for the years 2009-2013, using the most recent, corrected financial data available to the Board to restate the BNSF and Western Region variable costs for 2010-2012, and using the most recently available 2013 data. The Board continues to hold this case in abeyance for 2014-2018, to allow the asset markup resulting from the Berkshire Hathaway acquisition of BNSF to be fully reflected in BNSF's variable costs and the rate prescription. For 2014-2016, when each year's financial data becomes available, the Board will prescribe the rate for that year. Once the asset markup is fully incorporated, the Board will reinstitute the rate prescription for 2017-2018.

Decided: May 12, 2015

On January 20, 2012, the Board issued a decision concluding that changed circumstances relating to the 2010 purchase of BNSF Railway Company (BNSF) by Berkshire Hathaway, Inc. (Berkshire) justified reopening this proceeding. The Board temporarily lifted the prescriptive effect of the November 22, 2011 decision prescribing the maximum lawful rate that BNSF and Union Pacific Railroad Company (UP) could charge for the service at issue. On July 25, 2013, in a separate proceeding, the Board held that during 2010, 2011, and 2012, BNSF may not revalue its railroad assets to reflect the asset markup that resulted from the purchase. W. Coal Traffic League—Pet. for Declaratory Order (WCTL Order), FD 35506, slip op. at 28-29 (STB served July 25, 2013). Instead, BNSF was directed to transition to a full asset markup over four years beginning in 2013. Id. at 29-30. Also on July 25, 2013, the Board directed the parties here to confer and comment on approaches to reinstitute the rate prescription in this proceeding in light of the WCTL Order. Ariz. Elec. Power Coop. v. BNSF Ry. (July 2013 Decision), NOR 42113, slip op. at 3 (STB served July 25, 2013).

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

In 2008, Arizona Electric Power Cooperative, Inc. (AEPCO) filed a complaint challenging the reasonableness of the joint rates established by BNSF and UP for unit train coal transportation service from New Mexico and the northern portion of the Powder River Basin in Wyoming and Montana to AEPCO's Apache Generating Station located near Cochise, Ariz. On November 22, 2011, the Board found that BNSF and UP have market dominance over those movements, and that their rates exceeded the level defendants needed to charge to earn a reasonable return on the full replacement cost of the facilities used to serve AEPCO. Ariz. Elec. Power Coop. v. BNSF Ry. (November 2011 Decision), NOR 42113 (STB served Nov. 22, 2011). In that decision, the Board prescribed the maximum lawful rate that the carriers could charge, which amounted to 180% of the variable cost of providing the service.

On May 2, 2011, in Western Coal Traffic League—Petition for Declaratory Order, Docket No. FD 35506, the Western Coal Traffic League (WCTL) filed a petition asking the Board to adjust BNSF's Uniform Railroad Costing System (URCS) costs for 2010 and subsequent years to exclude the write-up in BNSF's net investment base attributable to the difference between the book value and the price that Berkshire paid to acquire BNSF in 2010, and to make corresponding changes in BNSF's annual URCS depreciation calculations. The Board instituted a proceeding and subsequently advised parties with BNSF rate prescriptions in effect in January 2012 that, if they believed the Board should temporarily lift the prescriptive effect of their 2012 rate prescriptions pending final resolution of issues raised in the WCTL petition, they should petition the Board to reconsider or reopen relevant Board decisions. W. Coal Traffic League—Pet. for Declaratory Order, FD 35506, slip op at 1 (STB served Sept. 28, 2011); W. Coal Traffic League—Pet. for Declaratory Order, FD 35506, slip op. at 2 (STB served Dec. 9, 2011). In response, on December 20, 2011, AEPCO petitioned the Board to reopen this proceeding so that the rates could be adjusted accordingly should the Board determine that BNSF's URCS costs should not reflect some or all of the acquisition premium.

On January 20, 2012, the Board found that changed circumstances justified reopening this proceeding and temporarily lifting the prescriptive effect of the rate prescriptions in this case. The Board "conclude[d] that the increase in BNSF's net investment base resulting from the Berkshire purchase, as well as our consideration of whether that increase should be excluded from BNSF's 2010 URCS data, constitutes 'substantially changed circumstances' that could materially affect the rates charged under the rate prescriptions set forth in the November 2011 Decision." Ariz. Elec. Power Coop. v. BNSF Ry. (January 2012 Decision), NOR 42113, slip op. at 2 (STB served Jan. 20, 2012).

On July 25, 2013, the Board concurrently issued two decisions relevant here. One prohibited BNSF from revaluing its railroad assets to reflect the write-up during the years 2010, 2011, and 2012, while also holding that BNSF must mark up its rail assets in accordance with Generally Accepted Accounting Principles (GAAP)[2] for 2013 and beyond, subject to a four-year

[2] GAAP are accounting standards, conventions, and rules that companies use to, among other things, record assets and liabilities. In the United States, the Securities and Exchange (continued . . .)

transition period. WCTL Order, slip op. at 2. The second decision directed the parties in this proceeding to confer and advise the Board on approaches to reinstituting the rate prescription. July 2013 Decision, slip op. at 3. The parties were unable to come to an agreement on the appropriate approach for the Board to reinstitute the rate prescription.[3]

DISCUSSION AND CONCLUSIONS

The parties have identified three issues requiring Board resolution. The first issue is whether to use the original or corrected URCS data to calculate the maximum lawful rate that BNSF may charge, which in this case is equal to the jurisdictional threshold. The second issue is whether, for certain years, the Board should recalculate the Western Region URCS in order to recalculate the variable costs for the Southwest Railroad (SWRR)[4] and whether the Board should similarly recalculate the UP URCS. The final issue is when and how to allow BNSF to reflect the asset markup in its rates at issue in this case. Currently, the Board has published URCS through 2013.[5]

As explained in the WCTL Order, slip op. at 7, "URCS is the Board's general purpose costing system used to estimate variable and total unit costs for railroads." In rate reasonableness complaints, "[t]he Board uses URCS to determine a carrier's variable costs." Id. An increase in the value of variable costs will reduce the R/VC ratio of the carrier's rates. The R/VC ratio also establishes the floor for regulatory scrutiny of rail rates.[6] Thus, if a railroad is

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Commission (SEC) has the authority to establish GAAP. However, the SEC has historically allowed the private sector to establish the guidance. U.S. Sec. & Exch. Comm'n, Generally Accepted Accounting Principles, http://investor.gov/glossary/glossary_terms (follow "Generally Accepted Accounting Principles" hyperlink") (last visited Apr. 30, 2015).

[3] BNSF Comment 1, Sept. 23, 2013.

[4] A short line, "SWRR is utilized by [BNSF] by agreement to complete the movement of the issue traffic" in this case. November 2011 Decision, slip op. at 14 n.16. "At Rincon, [N.M.] BNSF hands off the traffic to [SWRR]. SWRR handles the traffic to Deming, N.M., where it is interchanged with UP for movement to Apache[, N.M]." Id. at 8 n.6; see also id. at 38. "Because the Board does not require Class II or Class III railroads to collect the requisite annual data necessary to formulate URCS costs, URCS develops costs only for Class I railroads. Thus, as a proxy for the variable costs of a Class II or Class III rail carrier, the Board uses a composite average for all of the Class I carriers operating in that region of the country." Kan. City Power & Light Co. v. Union Pac. R.R., NOR 42095, slip op. at 8 (STB served May 19, 2008).

[5] The most recent published URCS data are available on the Board's website. See Surface Transp. Bd., Industry Data > Economic Data: URCS, http://www.stb.dot.gov/stb/industry/urcs.html (last visited Apr. 30, 2015).

[6] As explained in the WTCL Order, slip op. at 6, "a carrier is not considered to have market dominance unless the revenue produced by the rate is greater than 180% of its variable cost of providing the service (R/VC Ratio)."

acquired at a price above the predecessor's book value, as happened when Berkshire purchased BNSF, write-up of the railroad's assets under GAAP will increase the level of the 180% jurisdictional threshold due to, inter alia, an increase in depreciation expense. In general, this raises the threshold that shippers must meet to challenge a rate; in this case, it decreases the nominal value of the rate prescription to AEPCO (allowing the carriers to charge more to cover higher costs), which was set at the jurisdictional floor of 180%.

In the WCTL Order, slip op. at 28-29, the Board directed BNSF to refile its 2010, 2011, and 2012 R-1 reports to exclude the effects of the asset markup that resulted from the Berkshire purchase. BNSF was permitted to begin including the effects of the markup in its 2013 R-1 reports in phases, subject to a four-year transition period at the end of which the entire premium would be included. Id. at 29-30. The Board subsequently published corrected BNSF URCS data for 2010, 2011, and 2012. The Board has also published URCS data for 2013. There have been no updates to the UP URCS data for those years.[7] Thus, for 2010-2012 the corrected data are the most recent and most accurate data we have available for those years. The 2013 data, which begins to incorporate the asset markup, are the most recent and accurate data available.

The date of the most recently available data reflects the approximately two-year regulatory lag in the application of URCS to prescribed rates. This lag is due, in part, to the time it takes to collect, process, and publish URCS data. It means that in a typical case, once a rate is prescribed, the actual rate paid for a given time period is calculated based on an URCS value from a prior year indexed for inflation based on certain factors such as labor and supplies. Typically, indexing URCS data is a simple, unbiased approach to estimating variable costs and it is normally used to prescribe rates without creating a more lengthy delay than necessary to finalize rates.

However, this is not a typical case. As the Board has noted, the circumstances surrounding the Berkshire acquisition were unique. Berkshire paid more than the book value of BNSF and was required under GAAP to revalue its rail assets to reflect the current fair market value of those assets. In mergers involving two rail carriers, the impact of this markup on shippers may be offset by merger synergies, but there were no typical merger synergies in this transaction. WCTL Order, slip op. at 2. Berkshire also failed to obtain required Board approvals, and did not bring itself into compliance until late 2012. This prevented the Board from considering the transaction on its merits at the time of the acquisition. Id. at 29. To reflect the Board's holding in the WCTL Order, BNSF submitted revised R-1 reports removing the effect of the acquisition premium from its 2010-2012 variable costs, and the Board issued revised URCS data for those years; BNSF is incrementally including the acquisition premium

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[7] In June 2011, UP submitted to the Board a revised R-1 report for 2010. That revised R-1 report was used in the original 2010 URCS data published. Other R-1 report revisions that UP has submitted to the Board do not impact numbers that are used in the URCS calculations and therefore do not impact the UP URCS for those years. Consequently, as discussed in more detail later in this decision, there is no need to update the UP URCS to accurately calculate the Western Region URCS.

over the four-year period from 2013-2016, which will be reflected in the Board-issued URCS data. Id. at 27-30.

Original or Corrected URCS Data to Calculate the Maximum Lawful Rate. AEPCO asserts that where the Board has a corrected BNSF R-1 and a corrected BNSF URCS, the corrected URCS should replace the original URCS on a nunc pro tunc basis.[8] It argues that this conforms to the procedures established in Oklahoma Gas & Electric Co. v. Union Pacific Railroad (OG&E), NOR 42111, slip op. at 9 (STB served July 24, 2009), clarified by Oklahoma Gas & Electric Co. v. Union Pacific Railroad, NOR 42111 (STB served Oct. 26, 2009), and that typically, one year's R-1 report forms the basis for the same year's URCS, with URCS applied to rates two years later.[9] AEPCO describes the two-year regulatory lag that normally occurs in the application of URCS to prescribed rates[10] and states that its approach would adhere to this pattern.[11] For 2010-2012, it would use older indices to maintain the regulatory lag as if it were currently 2012, but it would use a corrected BNSF URCS (without the acquisition premium), and it would make a similar calculation through 2014. Under AEPCO's approach, the Board would use old data (albeit more accurate old data, i.e., the corrected 2010 BNSF URCS for 2010-2012, the corrected 2011 BNSF URCS for 2013, and the corrected 2012 BNSF URCS for 2014) and index it to more current levels to determine appropriate rate levels.

BNSF asserts that there is no reason to rely on indexed versions of outdated URCS calculations to recalculate the jurisdictional threshold for historical periods when more current data are available.[12] It contends that AEPCO's argument that the Board should continue to use the 2010 URCS data is an attempt to take advantage of understated fuel costs from 2010-2012.[13] BNSF argues that the Board should instead use the corrected URCS costs where available (i.e., 2010, 2011, and 2012) and the most recent URCS costs available for each year (2013 and subsequent years), and that this approach is consistent with long-standing Board precedent.[14] BNSF's approach would result in the Board using the most recent URCS available for the years 2010-2014 (corrected where necessary), as follows: the corrected 2010 BNSF URCS for 2010, the corrected 2011 BNSF URCS for 2011, the corrected 2012 BNSF URCS for 2012, the

[8] AEPCO Comment 5-6, Sept. 23, 2013.

[9] AEPCO Comment 6 (citing OG&E) (explaining that the 2013 URCS would be applied to the 2015 rates).

[10] As explained above, due to this lag the Board generally uses URCS from a prior year indexed to the current year to calculate prescribed rates.

[11] AEPCO Comment 6.

[12] BNSF Comment 5.

[13] Id. at 6-7.

[14] Id. at 5, 7 (citing OG&E, slip op. at 9), 7 n.7 (citing W. Fuels Ass'n v. BNSF Ry., NOR 42088, slip op. at 6-9 (STB served July 27, 2009); Cost Recovery Percentage, EP 399, slip op. at 3-4 (ICC served Dec. 23, 1983); FMC Wyo. Corp. v. Union Pac. R.R., 4 S.T.B. 699, 747-48 (2000)).

original 2013 BNSF URCS for 2013 (the first year of the transitional inclusion of the asset markup), and a corrected and indexed[15] 2013 BNSF URCS for 2014.

UP notes that its interest in these issues is limited to the time period when BNSF and UP charged joint rates, which was through 2011.[16] Its position is that the Board should use the most accurate URCS cost information available, which it argues are the corrected 2010 BNSF URCS and the corrected 2011 BNSF URCS for 2010 and 2011, respectively.[17] In its view, "Board precedent requires use of more accurate, actual URCS when they are available in time to be incorporated into decisions."[18]

We do not agree with AEPCO that, in this case, we should use old data and index it to reach a proxy for current data when current data are readily available, i.e., that we should maintain the regulatory lag and, for 2010-2012, index the corrected numbers as if it were 2012. AEPCO maintains that this is consistent with OG&E, where the Board denied the parties' request to establish a two-step "true-up" process to account for this regulatory lag, OG&E, slip op. at 9, but we do not agree. In OG&E, the Board was asked to set up a process, subsequent to the final rate prescription decision, where the parties would have established an interim rate each year and, in the future, when the URCS data for a given year became available the parties would recalculate the rate (i.e., true-up) and refund or pay the difference. Id. The Board rejected the true-up mechanism in OG&E because if the Board adopted the proposed true-up in that case, the precedent would then apply to all rail rate cases, the process would then always subject parties to lengthy delay, and indexing in that circumstance provided a reasonable balance between accuracy and time, expense, and burden. Id. at 10-11.

This case is distinguishable from OG&E. First, this proceeding has been reopened and is now ongoing and unlike OG&E, which would have involved adjustments made to a closed rate determination. Indeed, when the Board here found changed circumstances to justify reopening the proceeding, it lifted the prescriptive effect of the prior rate order. Second, we are not establishing a true-up mechanism here; rather, we are using the corrected data to give the appropriate effect to the acquisition premium. Thus, we are not correcting rates set under a prior order, but instead are using the most recent data available to prescribe rates at the most accurate level possible when the rate prescription goes into effect. Such an approach is consistent with Board precedent to use actual URCS when they are available in time to be incorporated into a rates decision. See FMC Wyo. Corp., 4 S.T.B. at 747. Although typically used in subsequent years to give effect to the Board's rate prescription, indexing is not necessary here for the 2010-

[15] BNSF proposes a formula by which the URCS data would be indexed and the asset markup added to calculate the BNSF URCS in years 2013-2016. BNSF Comment 9.

[16] UP Comment 2-3, Sept. 23, 2013 (citing Ariz. Elec. Power Coop. v. BNSF Ry., NOR 42113, slip op. at 3-4 (STB served May 22, 2012) (finding that the carriers are not required to continue charging a single rate as long as the relief to which the shipper is entitled is not compromised)).

[17] UP Comment 3.

[18] Id. (citing FMC Wyo. Corp., 4 S.T.B. at 747).

2013 time period, given that more recent data are available. The corrected URCS data provide a more accurate reflection of actual costs. Moreover, this is not a situation where we are updating an inflation index, but we are correcting for known adjustments to BNSF's variable costs due the Board's determination regarding the acquisition premium in the WCTL Order. The Board will require the use of the corrected URCS for each year the data are available. For 2010, 2011, and 2012, the parties are directed to use the corrected BNSF URCS for each year; for 2013, the parties are directed to use the current BNSF URCS, which is for 2013.

Western Region URCS. On the second issue, whether the Board should recalculate the Western Region URCS in order to recalculate the variable costs for the SWRR, AEPCO asserts that the Western Region URCS should be corrected and replaced in the same manner as the BNSF URCS.[19] It argues that not adjusting the Western Region URCS would provide the carriers with unwarranted cost recovery because it would improperly reflect the markup from the Berkshire purchase.[20] Under this scenario, the Board would use the corrected 2010 Western Region URCS for 2010-2012, the corrected 2011 Western Region URCS for 2013, and the corrected 2012 Western Region URCS for 2014.

BNSF asserts that the Board never indicated that it intended to reissue the Western Region URCS and that there is no reason for the Board to do so.[21] It argues that the recalculation of BNSF's costs is a response to Berkshire's non-compliance when it acquired BNSF; it is not intended to correct inaccuracies, but to deter non-compliance in the future, and it therefore provides no basis for restating historical variable costs for any railroad other than BNSF.[22] Thus, BNSF's position is that the Board should not change the URCS data used for the SWRR, but that the Board should use the original 2010 Western Region URCS for 2010-2012, the original 2011Western Region URCS for 2013, and the original 2012 Western Region URCS for 2014. BNSF also argues that if the Board does revise the jurisdictional threshold for SWRR, consistency would require the Board to also revise the calculations for UP.[23]

UP asserts that the Board found no evidence in the WCTL Order that the Western Region URCS was inaccurate. Like BNSF, it argues that it would be inappropriate to recalculate the Western Region URCS because "the Board found no evidence that the BNSF asset valuations used to calculate . . . [it] were inaccurate,"[24] and the reasons for recalculating the BNSF URCS

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[19] AEPCO Comment 6.

[20] Id. at 7.

[21] BNSF Comment 8.

[22] Id. at 8-9.

[23] Id. at 9.

[24] UP Comment 4.

are not relevant to the Western Region URCS.[25] It would not change the URCS used for the SWRR in 2010-2011.[26]

As discussed above, this proceeding remains open and the rate prescription is not currently in effect. Use of the original Western Region URCS, which includes the Berkshire acquisition premium, would not be a fair reflection of the holding in the WCTL Order (requiring a delay in BNSF's recognition of the acquisition premium). It would provide the carriers with unwarranted cost recovery by allowing them to benefit from the inclusion of the acquisition premium in the Western Region URCS in 2010-2012. Moreover, the carriers' argument that there is no reason to restate the historical variable costs for any other railroad is misplaced given that the Western Regional URCS, which serves as a proxy for the SWRR's URCS costs, is a composite average of BNSF and UP costs. Further, we again note that the most recent, most accurate, available URCS data should be used for each year when rates are prescribed.

We need not update the UP URCS for the corresponding years because, as noted above, to the extent the Board has updated 2010-2012 R-1 reports for UP, there have been no changes in that data that would impact the URCS calculations. Unlike BNSF in the WCTL Order, there are no conditions here that would justify the Board requiring UP to refile its R-1 reports. We will recalculate the Western Region URCS, using the most recent, corrected BNSF URCS for 2010-2012.

Reflecting the Asset Markup in BNSF's Rates. On the final issue, the dispute between BNSF and AEPCO about when to allow BNSF to begin reflecting the markup from the Berkshire purchase in its rates,[27] AEPCO argues that the phase-in of the acquisition premium should be applied beginning in 2015, when the 2013 URCS would be available, and it should be phased in through 2018.[28] It asserts that this approach is consistent with the WCTL Order and OG&E.[29] BNSF maintains that this would reflect a two-year delay beyond the year that the Board held it could begin reflecting the asset markup in its costs.[30] It argues that this would extend the impact of the write-up to a nine-year period, which would be inconsistent with the Board's decision "to mitigate the impact of BNSF's asset write-ups over a seven-year period"

[25] Id.

[26] Id. at 2, 4. UP does not take a position for any year after BNSF and UP began charging proportional rates for AEPCO's traffic.

[27] UP does not take a position on this issue, although it does note that the Board "required BNSF to transition to a full asset markup over four years to mitigate the potential effect of a sudden increase in the jurisdictional threshold on shippers' ability to challenge BNSF's rates." UP Comment 4.

[28] AEPCO Comment 6.

[29] AEPCO Comment 6-7.

[30] BNSF Comment 9.

and would prevent BNSF from fully recognizing the markup until the last year of the rate prescription.[31]

In the WCTL Order, the Board clearly "prohibit[ed] BNSF from marking up its assets in its financial statements filed with the Board during the period that Berkshire's ownership of BNSF violated [49 U.S.C.] § 11323." WCTL Order, slip op. at 28 (referring to years 2010-2012). The Board required "BNSF to transition the full markup to its rail assets equally over a four-year period, beginning with the 2013 R-1 data the carrier will file in 2014 . . . to mitigate the impact of BNSF's asset write-ups over a seven-year period . . . ." Id. at 30. It was not the Board's intent to deny BNSF the benefit of the asset markup for two additional years by delaying the phase-in of the asset markup until the 2013 URCS became available. Rather, the Board's intent was to fully recognize the asset markup by 2016, corresponding to the seven-year period beginning in 2010. To delay the inclusion of the asset markup in the rate prescription until 2015, as AEPCO prefers, would be more punitive towards BNSF than the Board intended.

Regarding AEPCO's indexing recommendation, as noted above, typically when prescribed rates are calculated for a given year, URCS values from a prior year are indexed for inflation based on specific factors. Such indexing would not, however, account for a significant change in depreciation expense, for instance, resulting from the write-up of asset values, which the Board held in the WCTL Order could begin in 2013. WCTL Order, slip op. at 30 (electing to mitigate the impact of the BNSF asset write-up over a seven-year period so as to capture a full business cycle, and not a longer period as suggested by AEPCO in this case). Normally, indexing the best available URCS data is a simple and unbiased approach that is unlikely to systematically skew the variable cost estimate in favor of either the shipper or the railroad. However, just relying on indexing for inflation is not an acceptable solution in this situation because it would not account for the acquisition premium. Id. at 3-4.

Due to the unique circumstance of this case, our broad discretion to fashion appropriate equitable remedies for violations of 49 U.S.C. § 11323, and our "authority to take equitable actions 'that are legitimate, reasonable and directly adjunct to the [agency's] explicit statutory power,'"[32] we will reinstitute the rate prescription through 2013, but keep this proceeding open and in abeyance regarding the incorporation of the asset markup into the rate prescription.[33] From 2014-2016, when each year's URCS, including the asset markup becomes available, the Board will prescribe the rate for that year. Once the asset markup is fully incorporated, and the 2016 BNSF URCS is available, the Board will reinstitute the rate prescription for 2017-2018,

[31] Id. at 9-10 (quoting WCTL Order, slip op. at 29).

[32] WCTL Order, slip op. at 28 (quoting ICC v. Am. Trucking Ass'n, 467 U.S. 354, 365 (1984) (internal quotations and citations omitted); citing 49 U.S.C. § 721(a); Zola v. ICC, 889 F.2d 508, 516 (3d Cir. 1989)).

[33] In this instance, the Board finds that leaving the rate prescription open until the acquisition premium is reflected in the relevant URCS data is a preferable solution to the approach suggested by BNSF (BNSF Comment 10), which is itself subject to estimates based on previous years' variable costs and potential calculation bias.

which can be indexed from the 2016 data or the most recently available data at the appropriate time. The parties are instructed to continue to keep account of the amounts paid while the proceeding is in abeyance. See January 2012 Decision, slip op. at 3 (noting that the parties came to an agreement about handling charges pending a final decision in the reopened proceeding). As always, the parties may confer and agree upon an alternative approach to finalizing the rate prescription in this proceeding for 2014-2018.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The parties are directed to use the corrected BNSF URCS for each year to calculate the rate prescription for 2009-2012, as described above.

2. The parties are directed to use the corrected Western Region URCS, which incorporates the corrected BNSF URCS, for each year to calculate the rate prescription for 2010-2012, as described above.

3. The prescriptive effect of the rate prescription in this proceeding is reinstituted through 2013. The prescriptive effect of the prior rate order remains temporarily lifted for 2014-2018. Each party is instructed to continue to keep account of amounts paid during the pendency of the reopening—in accordance with the parties' agreement to make the party/ies whole at the conclusion of this reopening, with respect to the amounts paid during the interim.

4. This proceeding is held in abeyance, regarding the transitional incorporation of the asset markup, as described above.

5. This decision will be effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.